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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,448	06/24/2003	William Anthony Harper		9399

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EXAMINER

CARTAGENA, MELVIN A

ART UNIT PAPER NUMBER

3754

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

5P

Office Action Summary

Application No.

10/602,448

Applicant(s)

HARPER, WILLIAM ANTHONY

Examiner

Melvin A. Cartagena

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 and 38-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 12-37 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-11 and 38-41 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6242003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not). Misnumbered claims 37-40 been renumbered 38-41 respectively.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1-11 and 38-41, drawn to a method of promoting hand sanitizing, classified in class 422, subclass 28.
 - II. Claims 12-37, drawn to a disposable squeeze packet, classified in class 222, subclass 94.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions II and I are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the squeeze package can be use to dispense non-sanitizing product such as food condiments or medication.

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4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with William Harper on March 24, 2005 a provisional election was made without traverse to prosecute the invention of Group II, claims 12-37. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-11 and 38-41 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 12-21 and 24-35 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2,976,988 to Schneider.

Schneider shows a disposable squeeze package as seen in Fig. 6, a flat packet 10a made of a flexible polymeric material sheet seal together, a first chamber 20a containing multiple doses of product, a second chamber 21a functioning as a valve for the fluid held within the first chamber and fill by squeezing with the finger the product in the first chamber, a partition 18a between the first and second chambers and having a fluid passage 23a, the partition is formed between the chambers where the barrier is formed by two aligned segments as seen in Fig. 1 or two angled segments as seen in Fig. 9, a tear off exit port 25a to dispense product from by squeezing the product out of the second

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chamber, the polymeric material is transparent, allowing the user to see the content color and condition of the product inside the package. With respect to the package designed to hold and preserve hand-sanitizing fluid, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2,976,988 to Schneider.

Schneider shows all claimed features as discussed above but is silent about the volume of the package first and second chambers. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the size of the chamber of Schneider to contained appropriate amounts of product to meet the intended application, since the size of the chamber merely depends of factors such as the potency of the sanitizing solution or number of doses per day needed to be carried by the package (see column 3, lines 52-71) which are an obvious matter of design choice within the skill in the art, in addition, the volume of a standard package of ketchup is about 8 milliliter, this packages are very popular and cheap to manufacture.

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10. Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2,976,988 to Schneider in view of US 3,670,927 to Hubbard.

Schneider shows all claimed features as discussed but is silent about bearing marking. Hubbard shows a package for hygienic dosages as seen in Figs. 1 and 4, the transparent package has an opaque insert to facilitate reading information markings on the package, see column 2, lines 47-51. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Schneider to include marking to inform the consumer of what is the content of the package or instructions to how to use it as taught by Hubbard to assure proper and safe use of the package and the package's content.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Farmer shows a self-sealing valve and sachet for dispensing liquids. Davis shows a dispensing pouch. Riner shows a non-reusable dispensing apparatus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on M-F (7:30AM to 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MAC 3/24/05
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